IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Bail Appl..No. 4306 of 2007()

CRIME NO.401 OF 2007 OF VAIKOM POLICE STATION

: PETITIONER/ACCUSED

SUDEESH, S/O.SADANANDAN,
AGED 30, SUDEESH BHAVAN, PUTHUTHARA,
VECHUR VILLAGE, VAIKOM TALUK.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4306 of 2007

Dated this the 16th day of July, 2007

ORDER

Application for anticipatory bail. Crime has been registered, inter alia, for offences punishable under Sections 452, 376 and 307 I.P.C. The petitioner is the sole accused in the crime. The crime has been registered on the basis of a private complaint filed by the defacto complainant on 16.06.07. The allegation relates to the commission of an offence of rape on 15.07.2002 and thereafter.

2. A long story is narrated. The defacto complainant and her husband had an affair and they got married ultimately. One child was born. The child is a student of the 9th standard now. The husband secured an employment abroad. The defacto complainant and the child continued in India. On 15.07.2002 in the absence of the husband, the petitioner allegedly had sexual intercourse with the defacto complainant. Again, after 15 days, there was yet another instance of sexual intercourse. According to the petitioner, these were instances of rape. The defacto complainant allegedly conceived in such sexual intercourses. On 04.04.03, a child was born. The husband had returned to India. On 16.06.07, the petitioner allegedly attempted to kill the child born in such relationship by attempting to hit the child with an iron rod through window. The husband of the

defacto complainant woke up. He found the accused running away from the scene. Interrogations and discussions followed. The defacto complainant allegedly made a confession of what really had happened. Even otherwise the husband is said to have entertained a doubt about the paternity of the second child. The husband and the wife separated. Thereafter the present complaint has been filed by the wife. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner prays, the learned Public Prosecutor does not seriously oppose the said prayer and I am satisfied that directions under Section 438 Cr.P.C can be issued in favour of the petitioner. I have already adverted to the skeletal facts and I am of the opinion that it is not necessary to advert to facts in any greater detail or embark on any discussion as to the acceptability of the allegations or the credibility of the data collected. Suffice it to say that, I am satisfied, that subject to appropriate conditions, anticipatory bail can be granted to the petitioner.

3. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 23.07.2007. He shall be enlarged on regular bail on his executing a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 4 p.m on 24.07.2007 and 25.07.2007. The petitioner can be interrogated in custody during this period and can also be subjected to the potency test. Thereafter the petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 12 noon on all Mondays and Fridays for a period of three months and subsequently as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

iv) If the petitioner were arrested prior to his surrender on 23.07.07 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.50,000/- (Rupees Fifty thousand only) without any sureties undertaking to appear before the learned Magistrate on 23.07.07.

(R.BASANT, JUDGE)

rtr/-